

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Goodrich
PL II

31435

FILE:

B-218104.2

DATE: June 12, 1985

MATTER OF:

Consolidated Marketing Network, Inc.--
Request for Reconsideration

DIGEST:

1. An agency may properly find a bidder to be nonresponsive based on a finding that the bidder's individual sureties failed to disclose outstanding bond obligations. This determination need not be referred to the Small Business Administration for consideration under its Certificate of Competency procedures even if the bidder is a small business.
2. In reviewing an agency's negative responsibility determination, GAO will defer to the agency's judgment unless the protester shows bad faith by the agency or no reasonable basis for the determination.

Consolidated Marketing Network, Inc. (CMN) requests reconsideration of our decision, Consolidated Marketing Network, Inc., B-218104.1 Feb. 12, 1985, 85-1 CPD ¶ 190. The protest concerned the Department of the Navy's determination that CMN was not responsible under invitation for bids (IFB) No. N62474-83-B-5941, issued by the Lemoore Naval Air Station. Since CMN is alleged to be a small business, the Navy had referred the matter to the Small Business Administration (SBA) for consideration under its Certificate of Competency (COC) program. The SBA declined to issue a COC. We dismissed the protest because we do not review SBA's refusal to issue a COC absent a showing of possible fraud or bad faith or that the SBA did not follow its own regulations.

In its request for reconsideration, CMN asserts that the Navy refused to supply the SBA with certain requested information, and for that reason the SBA closed its file without issuing a COC. However, the Navy also rejected CMN on the basis that CMN's sureties had failed to disclose outstanding bond obligations on this and other

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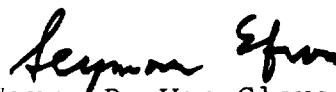
bids and so notified CMN by letter dated April 18, 1985. CMN has not commented to this Office on the Navy's April 18 rejection letter. The contract was subsequently awarded to the second low bidder.

A surety must disclose all outstanding bond obligations, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed determination of the surety's financial soundness. Dan's Janitorial Service, Inc., 61 Comp. Gen. 592 (1982), 82-2 CPD ¶ 217. Moreover, a contracting agency may consider the failure of a surety to disclose fully all outstanding bond obligations as a factor in its responsibility determination. Singleton Contracting Corp., B-216536, Mar. 27, 1985, 85-1 CPD ¶ 355. Referral to the SBA is not required in this circumstance, and the agency may make the final determination of nonresponsibility. Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581.

In reviewing a bidder's responsibility, the contracting officer is vested with a wide range of discretion and business judgment, and this Office will defer to the contracting officer's decision unless the protester shows that there was bad faith by the procuring agency or that there was no reasonable basis for the determination. C.W. Girard, C.M., B-216004, Dec. 26, 1984, 64 Comp. Gen. _____, 84-2 CPD ¶ 704.

We believe that, regardless of the actual liability that may remain on any outstanding bonds, a continuing pattern of nondisclosure of the bond obligations of CMN's individual sureties on this and other bids provides the contracting officer with a reasonable basis upon which to find the protester nonresponsible. Although CMN in its original protest suggests that the liability on certain bonds is minimal or nonexistent, we believe that is a judgment that must be made by the contracting officer based on a full disclosure of the individual surety's undertakings; it is not a determination that can be made by a surety by not disclosing the existence of potential liability on the bonds. See Dan's Janitorial Service Inc., supra.

The dismissal is affirmed.

for 
Harry R. Van Cleve
General Counsel